

AG Contract No. KR00 1591TRN
ADOT ECS File No. JPA 00-120
Project: TEA-PRS-0(4)P/SL418 01R
Section: Trails ROW Acquisition

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF PRESCOTT

THIS AGREEMENT is entered into 7 November, 2000,
pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended,
between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF
TRANSPORTATION (the "State") and the CITY OF PRESCOTT, acting by and through its
MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.

3. Congress has authorized appropriations for, but not limited to, transportation enhancements including roadside attractions of historic preservation.

4. Such project within the boundary of the City has been selected by the City; the survey of the project has been completed; and, as required, submitted to the Federal Highway Administration (FHWA) for its approval.

=====

NO 24310
Filed with the Secretary of State
Date Filed 11-07-00
Petrey Gayles
Secretary of State

B Vicky J. Greenwald

5 The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

6 The City, in order to obtain federal funds for the acquisition of right of way for the project, is willing to provide City funds to match federal funds in the ratio required or as finally fixed and determined by the City and FHWA.

7 The work embraced in this agreement, to be administered by the City, and the estimated costs are as follows. Right-of-Way Acquisition.

Right of Way Acquisition

Estimated Project Cost	\$ 422,057 00
Federal Aid Funds @ 94.3%	\$ 398,000 00
City Funds @ 5.7%	\$ 24,057 00
Total City Funds	\$ 24,057 00

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for acquisition.

a. If such project is approved by FHWA and the funds are available for the project, the City with the aid and consent of the State and the FHWA will proceed to acquire the right of way necessary for the project, such project to be performed, completed, accepted and paid for in accordance with the requirements of the FHWA. The State will enter into a Project Agreement with FHWA covering the work embraced in said right of way acquisition and will request the maximum federal funds available.

b. Should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the City shall be obligated to incur any expenditure in excess

2. Prior to the commencement of right of way acquisition, the City shall set aside sufficient funds in the amount determined to be necessary to match federal funds in the ratio required.

3. Upon completion of right of way acquisition, the City shall provide for, at its own cost and as an annual item in its budget, appropriate and proper maintenance.

4. The City shall allow public access to the completed project and grounds during normal business hours.

5 The City will provide personnel to supervise the acquisition of right of way.

6 The City will complete the acquisition project in accordance with the requirements of the relevant State and federal statutes, rules, or regulations. In the event the City fails to comply with any relevant State or federal statutes, rules, or regulations, the City shall hold the State harmless from any claims or costs incurred by the State as a result of the City's failure to comply.

III. MISCELLANEOUS PROVISIONS

1 The State assumes no financial obligation or liability under this agreement. The City assumes full responsibility for the project, any engineering in connection therewith, cost over-runs and claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the City and that the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation or attorneys' fees.

2 The cost of the right of way acquisition covered by this agreement is to be borne by FHWA and City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, City agrees to furnish and provide the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3 This agreement shall remain in force and effect until completion of the work; provided, however, that any provisions in this agreement for maintenance shall be perpetual.

4 This agreement shall become effective upon filing with the Secretary of State.

5 This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6 The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7 In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8 All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Department of Transportation
Joint Project Administration
205 S. 17th Avenue - 616E
Phoenix, AZ 85007

City of Prescott
City Manager
Box 2059
Prescott, AZ 86301

9 Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF PRESCOTT


STATE OF ARIZONA

Department of Transportation

By 
SAM STEIGER
Mayor

By 
CATHRINE J HEGEL
Contract Administrator

ATTEST:

By 
MARIE WATSON
City Clerk

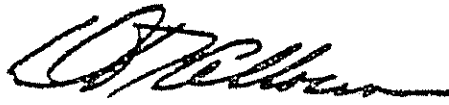
#2000-237
Res. No. 3301

15aug

RESOLUTION

BE IT RESOLVED on this 24th day of August 2000, that I, the undersigned MARY E. PETERS, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, to enter into an agreement with the City of Prescott for the purpose of defining responsibilities for conveying federal funds for improvements to Prescott Rails to Trails Phase II.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Contract Administrator for approval and execution.

A handwritten signature in dark ink, appearing to read 'D. Allocco', is written over a horizontal line.

DAVID R. ALLOCCO, P.E.
Assistant State Engineer,
Engineering Technical Group
for Mary E. Peters, Director

RESOLUTION NO 3301

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT, YAVAPAI COUNTY, ARIZONA, AUTHORIZING THE CITY OF PRESCOTT TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR PARTIAL FUNDING TO ACQUIRE REAL PROPERTY AS A PART OF THE RAILS TO TRAILS PROJECT, AND AUTHORIZING THE MAYOR AND STAFF TO TAKE ANY AND ALL STEPS NECESSARY TO ACCOMPLISH THE ABOVE

WHEREAS, the City desires to acquire real property for its rails to trails program, and

WHEREAS, the Federal Highway Administration (FHWA) has funds available for the foregoing acquisition; and

WHEREAS, if the City's rails to trails project is approved by FHWA funding, said funding will be administrated by the Arizona Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF PRESCOTT AS FOLLOWS:

Section 1. THAT, the City of Prescott hereby approves the attached Intergovernmental Agreement with the Arizona Department of Transportation for the administration of FHWA funds for the City's rails to trails project, attached hereto as Exhibit "A"

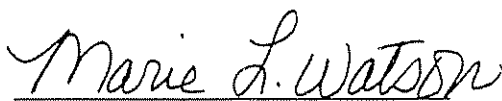
Section 2 THAT, the Mayor and Staff are hereby authorized to execute the attached Intergovernmental Agreement and to take any and all steps deemed necessary to accomplish the above.

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Prescott this 10th day of OCTOBER, 2000.


SAM STEIGER, Mayor

ATTEST.

APPROVED AS TO FORM.


MARIE L. WATSON
City Clerk


JOHN R. MOFFITT
City Attorney

APPROVAL OF THE PRESCOTT CITY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, and the CITY OF PRESCOTT and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

DATED this 11th day of OCTOBER, 2000.



City Attorney



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX, AZ. 85007-2926

JANET NAPOLITANO
ATTORNEY GENERAL

TRN Main: (602) 542-1680

Direct: (602) 542-8855

Fax: (602) 542-3646

MAIN PHONE: (602) 542-5025

FACSIMILE: (602) 542-4085

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR00-1591TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED: November 2, 2000

JANET NAPOLITANO
Attorney General

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:cpo

Enc.

#654213